

Atty. Docket No. 60,680-602
Dana Ref. No. 6672 CVDA
Serial No. 10/618,991

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II. ELECTION OF INVENTION

Applicant hereby elects, with traverse, the invention identified as Invention I (claims 1-20) in the Office Action.

III. TRAVERSAL

The requirement for an election of an invention on the merits is respectfully traversed. The inventions identified by the Office are not related as "Combination and Subcombination" as set forth in the Office Action because the inventions are from different classes of invention (process and articles of manufacture). In particular, claim 1 recites "a method of assembling a drive axle assembly of a tandem axle assembly", while claim 21 recites "a differential carrier housing". Rather, the inventions are related as a "Product and Process of Using". MPEP 806.05(h). Accordingly, the incorrect test has been applied to the identified inventions in determining that a restriction is required.

Under the proper test set forth in MPEP 806.05(h):

A product and a process of using the product can be shown to be distinct inventions if either or both of the following can be shown: (A) the process of using as claimed can be practiced with another materially different product; or (B) the product as claimed can be used in a materially different process.

The Office has failed to address and/or show that either the claimed process "can be practiced with another materially different product, or that the claimed product "can be used in a materially different process". In fact, Applicant respectfully submits that the Office cannot make such a showing as the product as claimed is required to perform the claimed process, and the product cannot be used in a materially different process.

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Accordingly, in light of the foregoing, Applicant respectfully submits that the requested restriction is improper, and therefore, respectfully requests that the restriction requirement be withdrawn.

IV. CONCLUSION

If the Office has any further questions regarding this matter, please contact Applicant's undersigned attorney.

Dated: 9/28/04

Respectfully Submitted,



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